

Message Text

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EXDIS

C O R R E C T E D COPY(PARA 4 LINE 2 OMITTED TEXT)

E.O. 11652: GDS

TAGS: PARM, NATO, SALT, GW

SUBJECT: US INTERPRETIVE STATEMENT ON NON-CIRCUMVENTION

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1. AT THE FEBRUARY 24 NAC DISCUSSION OF NON-CIRCUMVENTION THE UK, ITALY, NORWAY AND THE NETHERLANDS ACQUIESCED IN THE PRESENT US STRATEGY FOR RESOLVING THIS ISSUE THROUGH USE AT THE APPROPRIATE TIME OF OUR FALLBACK LANGUAGE. VARYING DEGREES OF OPPOSITION WERE VOICED BY FRANCE, BELGIUM AND THE FRG. OTHER PERM REPS WERE SILENT OR NON-COMMITTAL. THE STRONGEST STATEMENT OF OPPOSITION WAS BY THE FRG, WHICH PUT ON THE RECORD ITS ARGUMENTS AGAINST NON-CIRCUMVENTION IN GENERAL AND THE FALLBACK REFERENCE TO "OTHER STATES" IN PARTICULAR, WITH WHICH THE EMBASSY IS FAMILIAR.

2. WE HAVE CAREFULLY REVIEWED THE GERMAN LEGAL AND POLITICAL ARGUMENTS, AS WELL AS GERMAN SUGGESTIONS FOR ALTERING OR DROPPING OUT FALLBACK LANGUAGE. WE REMAIN CONVINCED THAT OUR PRESENT STRATEGY OFFERS THE MEANS TO CONCLUDE THE NON-CIRCUMVENTION ISSUE ON TERMS FAVORABLE TO ALLIANCE INTERESTS. WE WISH TO BE ABLE TO TABLE THE FALLBACK WHEN, IN OUR JUDGMENT, THE TIME IS MOST PROPITIOUS FOR CLOSING OFF THE ISSUE. WE DO NOT INTEND TO GO ANY FURTHER THAN THIS LANGUAGE.

3. AT THIS POINT, WE BELIEVE IT IS IMPORTANT THAT THE FRG AND THE OTHER ALLIES PERCEIVE THAT THE US IS CONFIDENT OF ITS COURSE ON AN ISSUE THAT IS SO CENTRAL TO OUR ALLIANCE SECURITY RELATIONSHIP. WE DO NOT WISH TO CONVEY ANY IMPRESSION TO THE FRG THAT OUR POSITION ON HOW TO RESOLVE THE NON-CIRCUMVENTION ISSUE IS STILL OPEN OR THAT WE ARE UNCERTAIN ABOUT WHAT OUR POSITION MEANS.

4. WE UNDERSTAND THE SERIOUSNESS OF GERMAN CONCERNS ABOUT THE NON-CIRCUMVENTION QUESTION. WE HAVE NOTED THE IMPORTANCE WHICH THE FRG ATTACHES TO OUR WILLINGNESS TO MAKE AN INTERPRETIVE STATEMENT TO THE NAC AND TO CONGRESS ABOUT
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THE SIGNIFICANCE OF NON-CIRCUMVENTION AFTER SIGNATURE. BEFORE WE TABLE OUR FALLBACK LANGUAGE IN GENEVA, WE WANT TO SHOW THE FRG THE FOLLOWING PAPER WHICH CONTAINS THE SUBSTANTIVE POINTS THAT WILL BE INCLUDED IN THE INTERPRETIVE STATEMENT, AND GET THEIR REACTION. WE ARE PRIMARILY INTERESTED IN FRG REACTION TO THE SUBSTANCE OF IT. WE WOULD PROPOSE TO SHOW THE PAPER TO THE OTHER ALLIES AS WELL. FRG AND ALLIED REACTIONS TO THE SUBSTANTIVE POINTS WILL HELP IN DRAFTING THE ACTUAL TEXT OF THE INTERPRETIVE STATEMENT AT A TIME CLOSER TO SIGNATURE OF A SALT AGREEMENT. WE WILL OF COURSE CONSULT FURTHER ON THE STATEMENT AT THAT TIME. WE WOULD HOPE THAT THE SUBSTANTIVE POINTS TO BE INCLUDED IN THE STATEMENT WOULD HELP SATISFY REMAINING FRG POLITICAL AND LEGAL CONCERNS ABOUT NON-CIRCUMVENTION, AND WOULD ENABLE THEM TO JOIN AN ALLIED CONSENSUS IN SUPPORTING OUR STRATEGY. REQUEST AMBASSADOR OR CHARGE TO SEE POLITICAL DIRECTOR BLECH AS SOON AS POSSIBLE AND GIVE HIM A COPY OF THE PAPER. IN GIVING THE FRG THE FOLLOWING PAPER, YOU SHOULD MAKE THE POINTS IN PARAGRAPH 6.

5. BEGIN TEXT: SUBSTANTIVE POINTS TO BE INCLUDED IN A US STATEMENT ON THE NON-CIRCUMVENTION PROVISION IN THE SALT AGREEMENT.

-- IN THE VIEW OF THE UNITED STATES, THE NON-CIRCUMVENTION PROVISION IN THE SALT AGREEMENT SIMPLY MAKES EXPLICIT THE

INHERENT OBLIGATION ANY STATE ASSUMES WHEN PARTY TO AN INTERNATIONAL AGREEMENT NOT TO CIRCUMVENT THE PROVISIONS OF THAT AGREEMENT. IT IS A BASIC TENET OF INTERNATIONAL LAW THAT AGREEMENTS ONCE ENTERED INTO ARE TO BE CARRIED OUT AND NOT CIRCUMVENTED, AND THE UNITED STATES WOULD BE SO OBLIGATED WITH OR WITHOUT A NON-CIRCUMVENTION PROVISION. IT IS THE POSITION OF THE UNITED STATES THAT THE NON-CIRCUMVENTION PROVISION DOES NOT IMPOSE ANY ADDITIONAL OBLIGATION WHATEVER ON IT BEYOND THE SPECIFIC OBLIGATIONS

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OF THE PROVISIONS OF THE TREATY AND, FOR THE PERIOD OF ITS EFFECTIVENESS, THE PROTOCOL.

-- THE UNITED STATES HAS CONSULTED INTENSIVELY WITH THE ALLIANCE ON THE SALT AGREEMENT, AND HAS MADE CLEAR TO THE ALLIES THAT THE AGREEMENT DEALS WITH THE STRATEGIC RELATIONSHIP BETWEEN THE UNITED STATES AND THE SOVIET UNION. THE US RECOGNIZES THE CONCERNS OF THE ALLIES ABOUT THE IMPACT OF THE NON-CIRCUMVENTION CLAUSE ON ALLIANCE COOPERATION. THE UNITED STATES WISHES SPECIFICALLY TO STATE THAT THE NON-CIRCUMVENTION PROVISION WILL NOT AFFECT EXISTING PATTERNS OF COLLABORATION AND COOPERATION WITH ITS ALLIES, NOR WILL IT PRECLUDE COOPERATION IN MODERNIZATION.

-- AS TO THE ISSUE OF TRANSFERS, THE UNITED STATES HAS REJECTED THE INCLUSION OF A PROVISION ON NON-TRANSFER IN THE SALT AGREEMENT. WE HAVE MADE CLEAR IN THE NEGOTIATING RECORD THAT TRANSFERS OF WEAPONS OR TECHNOLOGY TO OUR ALLIES WILL CONTINUE, AND CANNOT THEREFORE IPSO FACTO, CONSTITUTE CIRCUMVENTION. THE UNITED STATES WILL DEAL WITH FUTURE REQUESTS FOR TRANSFERS OF WEAPONS SYSTEMS AND TECHNOLOGY ON A CASE-BY-CASE BASIS UNDER THE SALT TWO AGREEMENT, AS IT WOULD HAVE DONE IN THE ABSENCE OF A SALT AGREEMENT. THE TRANSFER OF WEAPONS SYSTEMS OR TECHNOLOGY FOR SYSTEMS WHICH WERE NOT NUMERICALLY LIMITED OR PROHIBITED BY THE AGREEMENT WOULD BE UNAFFECTED BY THE AGREEMENT. WITH RESPECT TO SYSTEMS NUMERICALLY LIMITED IN THE AGREEMENT, AS UNDER THE INTERIM AGREEMENT, TRANSFERS OF SUCH SYSTEMS WOULD NOT BE NECESSARILY PRECLUDED BY THE AGREEMENT. OF COURSE, REQUESTS FOR TRANSFERS OF SUCH SYSTEMS WOULD, IN MANY CASES, INVOLVE POLICY ISSUES, AND WOULD HAVE TO BE DEALT WITH IN LIGHT OF THE CIRCUMSTANCES

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OF THE SITUATION AND THE PARTICULAR REQUEST. THIS WOULD ALSO BE THE CASE IF THERE WERE NO AGREEMENT.

-- THE UNITED STATES WILL NOT BE ABLE TO TRANSFER TO ITS ALLIES OR OTHER STATES THOSE WEAPONS SYSTEMS, OR TECH-

NOLOGY UNIQUELY RELATED TO SUCH SYSTEMS, WHICH ARE PROHIBITED TO THE UNITED STATES ITSELF BY THE AGREEMENT. THE UNITED STATES FULLY ACCEPTS ITS RESPONSIBILITY NOT TO CIRCUMVENT THE AGREEMENT. FOR THE UNITED STATES TO SUPPLY TO OTHER STATES SYSTEMS OF A TYPE THAT IS PROHIBITED TO THE UNITED STATES ITSELF BY A PROVISION OF THE AGREEMENT WOULD BE A CIRCUMVENTION OF THE AGREEMENT, EVEN IF THERE WERE NO NON-CIRCUMVENTION PROVISION.

-- IN ACCORDANCE WITH RECOGNIZED INTERNATIONAL PRACTICE, NO THIRD PARTY CAN BE BOUND OR LEGALLY AFFECTED BY THE OBLIGATIONS THE UNITED STATES ASSUMES UNDER THE SALT

AGREEMENT. THE UNITED STATES WOULD REJECT AND WOULD VIEW AS INCONSISTENT WITH THE POLITICAL AND STRATEGIC PURPOSES OF THE AGREEMENT ANY ATTEMPT BY THE SOVIET UNION TO RAISE, ON THE BASIS OF THE NON-CIRCUMVENTION PROVISION, QUESTIONS CONCERNING THE ACTIVITIES OF STATES NOT PARTY TO THE AGREEMENTS. IN BOTH A LEGAL AND PRACTICAL SENSE, ONLY THE UNITED STATES IS SUBJECT TO CHALLENGE IN CONNECTION WITH QUESTIONS RAISED BY THE SOVIET UNION WITH RESPECT TO THE SALT AGREEMENT. END TEXT.

6. BEGIN TALKING POINTS:

- WE HAVE CAREFULLY REVIEWED YOUR ARGUMENTS ABOUT THE POSSIBLE LEGAL AND POLITICAL RISKS OF ACCEPTING A NON-CIRCUMVENTION PROVISION, AND YOUR SUGGESTIONS FOR ALTERING OR DROPPING OUR FALLBACK REFERENCE TO "OTHER STATES."

- WE REMAIN CONVINCED THAT OUR NON-CIRCUMVENTION STRATEGY
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IS BEST MEANS TO SETTLE THIS ISSUE WITHOUT DAMAGE TO ALLIANCE INTERESTS. WE BELIEVE THE FALLBACK, WHEN TABLED AT THE APPROPRIATE MOMENT, WILL LEAD TO A RESOLUTION OF THIS ISSUE ON OUR TERMS. WE WILL NOT TABLE IT UNTIL WE ARE CONFIDENT IT WILL ACHIEVE THIS RESULT. WE WILL NOT GO BEYOND THE FALLBACK, BUT WE DO NOT BELIEVE THERE IS ANY REASONABLE PROSPECT OF THE SOVIETS ACCEPTING LESS THAN THE FALLBACK.

- THE FALLBACK IS OUR FINAL POSITION ON NON-CIRCUMVENTION, AND WE WILL MAKE THIS ABUNDANTLY CLEAR TO THE SOVIETS WHEN WE PRESENT IT TO THEM.

- BILATERALLY AND IN THE NAC DISCUSSION ON FEBRUARY 24, YOU HAVE STRESSED THE IMPORTANCE TO THE FRG OF THE INTERPRETIVE STATEMENT WE PLAN TO MAKE TO THE NAC AND EVENTUALLY TO THE SENATE AFTER SIGNATURE OF A SALT TWO AGREEMENT.

- IT IS OUR INTENTION WITH THIS STATEMENT TO ESTABLISH AN

UNEQUIVOCAL PUBLIC RECORD THAT THE NON-CIRCUMVENTION PROVISION OF A SALT AGREEMENT WILL NOT PREVENT US FROM CONTINUING TO ASSIST OUR ALLIES WITH WEAPONS SYSTEMS AND TECHNOLOGY, NOR WILL IT PROVIDE THE SOVIETS WITH ANY ADDITIONAL LEGAL OR POLITICAL BASE TO CHALLENGE OUR ACTIONS WITH RESPECT TO THE ALLIANCE BEYOND WHAT THEY WOULD HAVE HAD WITHOUT THE NON-CIRCUMVENTION PROVISION.

- HOWEVER, IT IS NOT IN YOUR INTERESTS OR OURS TO HAVE THIS INTERPRETIVE STATEMENT BECOME THE SUBJECT OF PUBLIC DISCUSSION BEFORE A SALT AGREEMENT IS SIGNED. OTHERWISE, THE

SOVIETS WOULD LIKELY SEEK TO INTRODUCE OBJECTIONABLE COUNTER-INTERPRETATIONS INTO THE NEGOTIATING RECORD, OR
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BEGIN HAGGLING WITH US OVER THE MEANING OF OUR STATEMENT.

- THE PAPER WE HAVE GIVEN YOU CONTAINS THE SUBSTANCE OF OUR STATEMENT. WE WOULD LIKE TO HAVE YOUR COMMENTS ON IT AS SOON AS POSSIBLE. WE ALSO WILL WANT TO SHOW THE PAPER TO THE OTHER ALLIES IN THE VERY NEAR FUTURE.

- THESE POINTS REPRESENT A STRONG US COUNTER TO THE POLITICAL AND LEGAL CONCERNS YOU HAVE EXPRESSED ABOUT NON-CIRCUMVENTION. WE WOULD HOPE THE ASSURANCES OFFERED BY THE UNITED STATES THROUGH AN INTERPRETIVE STATEMENT CONTAINING THESE POINTS WOULD ENABLE THE FRG TO JOIN THE OTHER ALLIES IN SUPPORTING OUR NON-CIRCUMVENTION STRATEGY.

-WE HOPE TO HAVE YOUR REACTION TO THE STATEMENT AS SOON AS POSSIBLE. VANCE

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